

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENJAMIN KUHN

Claimant

**JOHN DEERE CONSTRUCTION
EQUIPMENT**

Employer

APPEAL 21A-UI-09763-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20

Claimant: Appellant (2)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 6, 2021, Benjamin Kuhn (claimant/appellant) filed an appeal from the August 10, 2020, reference 01, unemployment insurance decision that granted benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 14, 2021, at 8:00 a.m. The claimant participated. The employer did not participate. Official notice was taken of the administrative record. The hearing was held jointly with Appeal 21A-UI-09764-SN-T. The claimant waived timeliness not being listed as an issue on the hearing notice. Official notice was taken of the administrative file. Exhibits D-1, D-2 and D-3 were admitted into the record.

ISSUES:

- Whether the claimant's appeal was timely? Whether it has reasonable grounds to be considered otherwise timely?
- Whether claimant is totally, partially or temporarily unemployed?
- Whether claimant is able to and available for work?
- Whether claimant is still employed at the same hours and wages?
- Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer, John Deere Construction Equipment, on June 1, 2015. The claimant is a full-time mechanic, working an average of 40 hours per week. The claimant's hourly wage was \$26.00 during the time he made weekly claims.

The employer closed down for the weeks ending May 16, 2020 and May 23, 2020. The claimant performed no work for the employer those weeks because employer had no work available.

The employer opened on the following week ending May 30, 2020. The claimant filed an initial claim for unemployment insurance benefits effective April 26, 2020. The claimant's weekly benefit amount is \$481.00. The claimant received his full pay check the remaining weeks he made weekly claims which far exceeds his weekly benefit amount.

A disqualification decision was mailed to the claimant's address of record on August 10, 2020. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was the overpayment decision of August 10, 2020. (Exhibit D-3) The appeal was sent within the appeal period stated on the overpayment decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is not timely, but it has other reasonable grounds to be considered timely.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able and available and unemployed for the weeks he made weekly claims. The administrative law judge concludes the claimant was totally

unemployed and able and available for the weeks ending May 16, 2020 and May 23, 2020; benefits are allowed subject to claimant reporting wages earned and provided claimant is otherwise eligible. The remaining weeks he made weekly claims he exceeded the threshold for earnings to be considered even partially unemployed.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. R. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

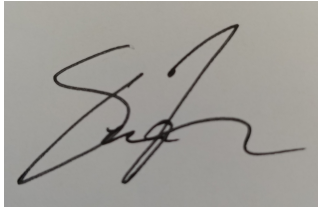
(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was totally unemployed for the weeks ending May 16, 2020 and May 23, 2020. He was able and available to work for those weeks if work had been given to him.

The administrative law judge concurs with the representative's result regarding the remaining weeks the claimant made weekly claims, but disagrees with the reason he is disqualified for those weeks. Iowa Admin. R. 871-24.23(26) only applies to part-time positions. The claimant is disqualified from the remaining weeks because he earned more than \$496 for those weeks or his weekly benefit amount of \$481 plus \$15 as outlined in Iowa Code section 96.19(38)(b)(1).

DECISION:

The August 10, 2020, reference 01, unemployment insurance decision is reversed. The claimant was totally unemployed for the weeks ending May 16, 2020 and May 23, 2020. He was able and available for work if work had been offered to him. Benefits are allowed.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 22, 2021
Decision Dated and Mailed

smn/kmj